REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application in view of the amendments and the remarks to follow. Claims 1-11, 13-40, 42-47 and 49-57 are pending in this application.

The present Office Action is silent with respect to the amendments to the drawing tendered with the Response dated January 26, 2004. Clarification of the status of the drawing is respectfully requested.

35 U.S.C. § 103

Claims 1-11, 13-40, 42-47 and 49-57 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kalra et al., U.S. Patent No. 5,953,506 (hereinafter ("Kalra"), in view of Katseff et al. (hereinafter "Katseff"), U.S. Patent No. 5,822,537. Applicant respectfully disagrees and requests reconsideration.

Kalra describes "Method and apparatus that provides a scalable media delivery system." (Title). Kalra states (Abstract) that:

> The present invention provides an apparatus and method for encoding, storing, transmitting and decoding multimedia information in the form of scalable, streamed digital data. A base stream containing basic informational content and subsequent streams containing additive informational content are initially created from standard digital multimedia data by a transcoder. Client computers, each of which may have different configurations and capabilities are capable of accessing a stream server that contains the scalable streamed digital data. Each different client computer, therefore, may access different stream combinations according to a profile associated with each different client computer. Thus, the streams accessed from the server are tailored to match the profile of each client computer so that the best combination of streams can be provided to maximize the resolution of the 3D, audio and video components.

Kalra is thus concerned with tailoring streamed data to client-computer-specific needs.

Katseff describes a "multimedia networked system detecting congestion by monitoring buffer's threshold and compensating by reducing video transmittal rate then reducing audio playback rate" (Title). More specifically, Katseff states (Abstract) that:

> Disclosed is a networked multimedia information system which may be utilized to record, store and distribute multimedia presentations together with any supplemental materials that may be referenced during the presentation. The recorded presentation, together with the associated supplemental materials, may be simultaneously presented on a display containing two separate viewing windows. The effects

> of network congestion are minimized by prefetching audio and video data for storage in audio and video buffers. An adaptive control algorithm compensates for network congestion by dynamically varying the rate at which video frames are retrieved over the network, in response to network traffic conditions. The audio playback speed is reduced if the audio data does not arrive fast enough over the network to maintain the desired size of the audio buffer after the amount of video data transmitted across the network has been reduced to a minimum value.

The Office Action states (p. 2) that, "per claims 1 and 49, Kalra discloses a method comprising

detecting, in a system for streaming a plurality of data streams from a server to a client, a potential for overburdening the system (col. 4, lines 6-13, lines 20-39, lines 47-59, col. 15, lines 33-67 and col. 16, lines 1-5) ..."

The first of these passages (col. 4, lines 6-13) states that: "Operation of transcoder 10 will be explained hereinafter, but is initially mentioned to clarify that the present invention can operate upon standard digital multimedia data that is stored in one of a variety of formats, MPEG, YUV, and BMP formats for digital video, VRML format for 3-D graphics and MPEG, WAV and AIFF formats for digital audio, as well as be implemented from a multimedia signals that are not digitized." This passage has no discernible relationship to the proposition for which it is cited. Clarification is respectfully requested.

The second of these passages (col. 4, lines 20-39) states that:

> Adaptive streams 16 and 18 are illustrated in FIG. 2A as streams of data containing information independent from the adaptive stream 14 previously mentioned, but which the present invention can use, as described hereinafter, to obtain various combinations of images and sounds having a desired resolution. The stream management module 20 illustrated in FIG. 2 according to the present invention will obtain a desired resolution profile from a multimedia device 22 and, based upon that desired resolution profile, select the appropriate base and additive streams from the available adaptive digital data streams associated therewith. Stream management module 20 then transmits

> these selected streams to the multimedia device, where they are decoded and then displayed for the user to experience.
>
> It has been found that the present invention can be most easily implemented if a virtual channel for each different type of multimedia is generated. Thus, if only audio and video is being transmitted, two virtual channels, having bandwidth split between them, are needed. However, if audio, video and 3D are all being transmitted, three virtual channels, having bandwidth split between them, are needed.

There is no discernible relationship between such passage and the propositions for which it is cited. Clarification of the rejection is again requested.

The third of these passages (col. 4, lines 47-59) states that:

> FIG. 2B illustrates a specific example of various types of adaptive digital streams that a stream management module 20 can operate upon. In this example, animation 3-D and video streams provide visual elements that the stream management module can select that can then be displayed for visual sensory perception by a multimedia device. Similarly, textual adaptive digital streams can also be received by the stream management module 20 so that text can also appear and be visually perceived based upon the language that the user desires to obtain. Furthermore, audio is also transmitted by the stream management module based upon profile characteristics selected by the user, such as whether mono or stereo sound that is oversampled or not is desired.

The fourth of these passages (col. 15, line 39 through col. 16, line 7) states that:

> So that the operation of the present invention is most easily understood, reference will first be made to the operation that allows for the client computer to determine the characteristics of the client system that are then used to generate a profile associated with the client computer. Specifically, this profile, in combination with an actual available network bandwidth, will be dynamically updated at periodic intervals, typically being a minute or less and preferably less than every 10 seconds, so that the most appropriate combination of adaptive streams, at the most appropriate frame rate, are transmitted by the stream server to the client computer.
>
> Referring now to FIG. 16A1, once a user has determined that he desires to view a video sequence using adaptive streams, an adaptive streams program resident within the client computer, begins at a step

> 600 and, at a step 602 makes a determination of the user profile. This includes a step 602A in which a CPU constraint is determined.
>
> This CPU constraint is determined by having the client CPU process test samples of adaptive streams. The first test sample contains only the base adaptive stream, whereas each of seven subsequent test samples contain an additional one of the additive adaptive streams. Thus, by determining the time that it takes the client computer to decode and play back each sample, a determination can be made as to an average amount of time it will take to decode different stream combinations. Alternatively, the CPU constraint can be determined by testing the capabilities of the client computer for media playback, which capabilities can be measured through the time it takes for certain primitive operations, such as IDCT decodee, variable length decode and color conversion operations, for example. An audio sample is also decoded and the time taken for this decoding noted.
>
> After these determinations have been made, a step 602B follows in which the user sets his preference for the quality of video as compared to the quality of audio on his system. Since available bandwidth needs to be split between the available audio and video, the user can determine whether he wants to have video only, audio only, or some combination in between. The graph illustrated in FIG. 16A2 shows, for different available bandwidths, a normalized preference and available bandwidth with respect to this feature.

These passages also have no discernible relationship to the subject matter for which it is cited. Clarification is respectfully requested. The rejection fails to establish that Kalra provides any teaching or disclosure of detecting, in a system for streaming a plurality of data streams from a server to a client, a potential for overburdening the system.

Katseff teaches that a system relying on a single, combined data stream is preferred. Katseff teaches (col. 6, line 60 through col. 7, line 7) that:

> The data stream generated by the digitizer/compressor 360 is preferably in the JPEG Movie File format, which is described in "JPEG Movie File Specification, Release 1.0," Parallax Graphics, Inc., Santa Clara, Calif. (Nov. 5, 1992), incorporated herein by reference. The JPEG Movie File format interleaves one frames' worth of audio with a frame of video. For example, if video signals are being stored for a display rate of 10 frames per second (fps), the resulting interleaved data file will include a repeating pattern of one frame of video, followed by a tenth of a second's worth of audio.

The JPEG Movie File format is preferred because of the inherent synchronization of the audio and video streams that results from the paired storage of a video frame with its associated audio, as discussed further below.

In contrast, independent claim 1 recites: "A method comprising: detecting, in a system for streaming a plurality of data streams from a server to a client, a potential overburdening of the system; selecting at least one of the plurality of data streams in response to detecting the potential overburdening of the system; and altering playback of the at least one data stream to avoid overburdening the system", while independent claim 49 recites "One or more computer-readable memories containing a computer program that is executable by a processor to perform acts of: detecting, in a system for streaming a plurality of data streams from a server to a client, a potential overburdening of the system; selecting at least one of the plurality of data streams in response to detecting the potential overburdening of the system; and altering playback of the at least one data stream to avoid overburdening the system", which recitations are not taught, disclosed, suggested or motivated by the cited references, alone or in any proper combination.

Katseff describes (col. 14, line 56 through col. 15, line 65) a system whereby the video portion of one data stream of multimedia content is always the chosen portion for data reduction, because "It has been found that a person viewing a recorded presentation will object more strongly to defects in the audio portion of the recorded program than to defects in the video portions of the presentation." (col. 15, lines 12-16). When system congestion is so great that even this is not enough, Katseff teaches that "the data buffer monitoring subroutine will

compensate for the delayed arrival of audio data by playing the audio data form the audio buffer 110 at slower than real time" (col. 15, lines 63-65).

Katseff thus teaches away from "selecting at least one of the plurality of data streams in response to detecting the potential overburdening of the system", as recited in claim 1, because Katseff has pre-determined which portion of the data stream will be selected when system congestion is detected. In fact, as noted above, Katseff teaches use of a data format that obviates multiple data streams representing multimedia content.

It is improper to employ a reference in a combination when the reference teaches away from the combination. This is explained more fully in MPEP 2145(X)(D)(2), entitled "References Cannot Be Combined Where Reference Teaches Away from Their Combination". This MPEP section states that: "It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)".

The Office Action provides the naked conclusion that "It would have been obvious ...." but fails to identify any motivation in either reference to modify and/or combine teachings. There is no teaching or guidance identified within the references to aid one of ordinary skill in picking and choosing elements from the embodiments of the references or in assembling those elements to attempt to arrive at the subject matter of any of Applicant's claims. As such, the rejection employs an improper "obvious to try" standard of unpatentability.

Such is improper, as is discussed below in more detail with reference to MPEP §2145(X)(B), entitled "Obvious To Try Rationale". This MPEP section

states that "The admonition that 'obvious to try' is not the standard under §103 has been directed mainly at two kinds of error. In some cases, what would have been 'obvious to try' would have been to vary all parameters or try each of numerous possible choices until one possibly arrived at a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful.... In others, what was 'obvious to try' was to explore a new technology or general approach that seemed to be a promising field of experimentation, where the prior art gave only general guidance as to the particular form of the claimed invention or how to achieve it." *In re O'Farrell*, 853 F.2d 894, 903, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988) (citations omitted)".

In this instance, no guidance in selecting some but not others of the many elements from the embodiments of the references is identified. Similarly, no direction as to which of many possible choices is likely to be successful has been identified.

As there is no basis for the Examiner's contentions within the cited references, the only possible motivation for these contentions is hindsight reconstruction wherein the Examiner is utilizing Applicant's own disclosure to construct a reason for combining and/or modifying the teachings of the cited references. The Examiner is reminded that hindsight reconstruction is not an appropriate basis for a §103 rejection. (*See, e.g., Interconnect Planning Corp. v. Feil*, 227 USPQ 543, 551 (Fed. Cir. 1985); *In re Mills*, 16 USPQ2d 1430 (Fed. Cir. 1990) (explaining that hindsight reconstruction is an improper basis for rejection of a claim).)

Additionally, independent claim 13 recites: "A system comprising: a client computer coupled to a network; a server computer coupled to transmit a plurality of individual data streams to the client computer via the network; and wherein the client computer is to detect when bandwidth from the server to the client computer that is allotted to transmitting the plurality of individual data streams would be exceeded and take action to prevent the allotted bandwidth from being exceeded", which is not taught, disclosed, suggested or motivated by the cited references, alone or in combination.

Further, independent claim 20 recites "A server computer comprising: a bus; a memory system, coupled to the bus, to store a plurality of instructions; and a processor, coupled to the bus, to execute the plurality of instructions to: receive an indication that time-scale modification for a data stream that was previously performed at a client computer should now be performed at the server computer, and transmit a time-scale modified data stream to the client computer", which is not taught, disclosed, suggested or motivated by the cited references, alone or in combination.

With respect to claims 13 and 20, the Office Action states (p. 3) that Kalra discloses that "the client computer is to detect when the bandwidth from the server to the client computer that is allotted to transmitting the plurality of data streams would be exceeded and take action to prevent the allotted bandwidth from being exceeded (col. 15, lines 34-67, col. 16, lines 1-5 and lines 18-28)." These passages do not describe such. Instead, they state that:

> So that the operation of the present invention is most easily understood, reference will first be made to the operation that allows for the client computer to determine the characteristics of the client system that are then used to generate a profile associated with the

> client computer. Specifically, this profile, in combination with an actual available network bandwidth, will be dynamically updated at periodic intervals, typically being a minute or less and preferably less than every 10 seconds, so that the most appropriate combination of adaptive streams, at the most appropriate frame rate, are transmitted by the stream server to the client computer.

This passage is completely silent with respect to anything that would involve detecting, by the client computer, when the bandwidth from the server to the client computer that is allotted to transmitting the plurality of data streams would be exceeded. Instead, it suggests that the server modifies data streams responsive to the content to be streamed exceeding a bandwidth that has been determined to be available. Kalra teaches that the server thus is comparing the bandwidth that is available to the bandwidth represented by the information associated with the content to be streamed and so that the server detects when the available transmission bandwidth may be exceeded.

The subsequent portion of this passage (line 51 et seq.) describe determination of CPU constraints, which have nothing to do with available bandwidth, and then describe a user setting quality parameters for audio and video playback. These parameters and user preferences are used, in turn, to split bandwidth between video and audio and can be used (col. 16, line 2 et seq.) so that "the user can determine whether he wants to have video only, audio only, or some combination in between". This does not involve any "action to prevent the allotted bandwidth from being exceeded"; it merely allows the user to determine how the user wishes to employ bandwidth that is available. Such is underscored by the passage at line 18 et seq., stating that: "Thereafter, the profile is sent [from the client computer, see col. 15 line 45 et seq.] in a step 606 and, after the user makes a selection of the particular sequence that he desires to see/hear in step 608, step

610 follows and adaptive streams are transmitted in accordance with the user profile thereafter."

> Further, Kalra teaches (col. 16, line 37 et seq.) that:
> Overall operation of the adaptive stream server will now be described with respect to FIG. 15A. Once the adaptive stream server receives a profile from the user, in step 550, it uses that information, as well as other information described hereinafter, to make a determination of which streams to transmit in a step 552. Once this determination is made, streams are actually transmitted in a step 554, as long as the profile is not updated, as will be explained further hereinafter, or there is no indication that there is an end of session, as depicted in FIG. 15A by step 556, transmission will continue. If an end of session is depicted, the end of the session will occur as indicated by step 568.

Kalra thus teaches that adaptation of the media to be transmitted is tailored to the available bandwidth by the server and not by any action from the client computer.

The Office Action cites portions of Katseff (p. 4) as supplying deficiencies of Kalra. Col. 3, lines 52-57 of Katseff describe a general purpose computer workstation environment. There is no hint identified in the Office Action that would lead one of ordinary skill in the relevant arts to combine the teachings of Kalra and Katseff, and combining their teachings fails to provide the subject matter recited in claims 13 and/or 20.

Moreover, independent claim 24 recites "An apparatus comprising: a master control component to maintain a master timeline for a multimedia presentation; and a plurality of individual stream controls corresponding to individual data streams for the multimedia presentation, wherein each of the plurality of individual stream controls is to maintain a timeline for the corresponding individual data stream", which is not taught, disclosed, suggested or motivated by the cited references, alone or in combination.

Claim 29 recites "One or more computer-readable media having stored thereon a computer program that, when executed by one or more processors, causes the one or more processors to perform functions including: receiving a user request at a client for a new playback speed of multimedia content being streamed as a plurality of individual streams to the client; and modifying the playback of each stream of the multimedia content in accordance with the new playback speed", while independent claim 52 recites "One or more computer-readable media having stored thereon a computer program that, when executed by one or more processors, causes the one or more processors to perform functions including: receiving a user request at a client for a new playback speed of multimedia content being streamed as a plurality of synchronized individual streams to the client; and modifying the playback of each stream of the multimedia content in accordance with the new playback speed", which recitations are not taught, disclosed, suggested or motivated by the cited references, alone or in combination.

The discussion of claim 24 presented in the Office Action does not make sense. First, the Office Action states (p. 4) that Kalra fails to teach the elements of claim 24, providing voluminous citations (p. 5) to portions of Kalra. Then the Office Action states (p. 5) that Katseff teaches these elements. The rejection of claims 29 and 52 is similarly incomprehensible. Clarification of the rejections is requested.

The portions of Katseff that are referenced at col. 9, lines 16-22, describe clock synchronization and synchronization of data streams to a clock and thus to

each other. This is completely unrelated to modification of playback speed. The passage at col. 13, lines 48 through 67 states that:

> Similarly, if the recorded presentation has associated continuous media supplemental materials, the video process will utilize the continuous media synchronization subroutine of FIG. 9 to retrieve the appropriate event marker from the continuous media hyperlink file 800 corresponding to the starting video frame selected using the frame number scroll bar 540, for transmittal to the continuous media presentation process. It is noted that if a user has selected a frame number that has not yet been received by the workstation 15 from the respective file server, the video process must first transmit a retrieval request to the file server to retrieve the necessary frames.
>
> In addition, window 530 includes a playback speed scroll bar 550 that allows a user to control the playback speed, in frames per second, of the recorded presentation, in a known manner. The playback speed scroll bar allows the user to adjust the playback speed from a minimum of zero frames per second, i.e., a still image, up to the maximum recorded frame rate of the video, in either forward or reverse mode.
>
> It is noted that if a user has selected a frame number that has not yet been received by the workstation 15 from the respective file server, the video process must first transmit a retrieval request to the file server to retrieve the necessary frames.

This passage has nothing to do with timeline management or playback speed.

The passage at col. 14, lines 1-6 states that: "Once the user has selected a video playback speed using the playback speed scroll bar 550, the video process will adjust the rate of data being requested from the storage and retrieval system 70 to the selected playback speed, in addition to making local adjustments to the video and audio outputs of workstation 15." This passage is also void of any disclosure of any "plurality of individual stream controls corresponding to individual data streams for the multimedia presentation, wherein each of the plurality of individual stream controls is to maintain a timeline for the

corresponding individual data stream", as recited in claim 24, or "modifying the playback of each stream of the multimedia content in accordance with the new playback speed", as recited in claims 29 and 52.

Katseff teaches (col. 6, line 60 through col. 7, line 7) that a single data stream representing multimedia content is preferred. As such, Katseff fails to describe "a plurality of individual stream controls corresponding to individual data streams for the multimedia presentation, wherein each of the plurality of individual stream controls is to maintain a timeline for the corresponding individual data stream", as recited in claim 24, or "modifying the playback of each stream of the multimedia content in accordance with the new playback speed" as recited in claims 29 and 52. Katseff teaches use of a data format that obviates any need for such, and, as such, teaches away from the recitation of any of claims 24, 29 or 52.

Yet further, independent claim 35 recites "A method comprising: receiving streaming text from a server; receiving a user request to change a playback speed of the streaming text; and altering the playback speed of the streaming text in accordance with the user request", while independent claim 50 recites "One or more computer-readable memories containing a computer program that is executable by a processor to perform acts of: receiving streaming text from a server; receiving a user request to change a playback speed of the streaming text; and altering the playback speed of the streaming text in accordance with the user request", which recitations are not taught, disclosed, suggested or motivated by the cited references, alone or in combination.

As noted above, Kalra fails to provide the elements that it is cited for. Katseff fails to cure the deficiencies of Kalra.

Katseff describes a system whereby video playback speeds are modified (col. 13, line 61 through col. 17, line 6) and is silent with respect to modification of "a playback speed of the streaming text" as recited in claims 35 and 50.

As well, independent claim 42 recites "A method comprising: receiving a plurality of images as streaming image data from a server; receiving a user request to change a playback speed of the plurality of images; and altering the playback speed of the plurality of images in accordance with the user request", while independent claim 51 recites "One or more computer-readable memories containing a computer program that is executable by a processor to perform acts of: receiving a plurality of images as streaming image data from a server; receiving a user request to change a playback speed of the plurality of images; and altering the playback speed of the plurality of images in accordance with the user request", which recitations are not taught, disclosed, suggested or motivated by the cited references, alone or in combination. As noted above, the cited portions of Katseff do not describe any user request to change a playback speed of a plurality of images and are silent with respect to any user request to change a playback speed of a plurality of images or altering the playback speed, as recited in claims 42 and/or 51.

Moreover, simply providing a conclusory statement that "It would have been obvious ...." fails to meet the standards set forth in the MPEP for establishing a prima facie case of unpatentability. These are set forth in MPEP §2142, entitled "Legal Concept of Prima Facie Obviousness" (see also MPEP §706.02(j).).

This MPEP section states that "To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." The references fail to teach or disclose the elements recited in the claims. Accordingly, the references cannot provide motivation to modify their teachings to arrive at the invention as claimed, and the Examiner has identified no such teaching or disclosure in the references. As a result, the first prong of the test cannot be met.

MPEP §2143 further states that "Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

Inasmuch as the references fail to provide all of the features recited in Applicant's claims, as described with specificity hereinabove, the third prong of the test is not met. As a result, there cannot be a reasonable expectation of success. As such, the second prong of the test cannot be met.

MPEP §2143 additionally states that "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)." This fourth criterion cannot be met because the references fail to teach or disclose the elements recited in the claim.

Accordingly, the unpatentability rejections fail all of the criteria for establishing a prima facie case of obviousness as set forth in the MPEP.

Moreover, no evidence has been provided as to why it would be obvious to combine or modify the teachings of these references. Evidence of a suggestion to combine or modify may flow from the prior art references themselves, from the knowledge of one skilled in the art, or from the nature of the problem to be solved. However, this range of sources does not diminish the requirement for actual evidence. Further, the showing must be clear and particular. See *In re Dembiczak*, 175 F.3d 994, 998 (Fed. Cir. 1999).

In fact, Kalra teaches (col. 1, line 58 et seq.) that: "Further, there is the need for servers to be able, in real time, to determine the amount of digital information to transmit and then transmit this digital information while minimizing the computational power required to perform such operation." Kalra indicates (col. 1, line 22 et seq.) that such facilitates being able to provide high end systems with the information to service their superior rendering characteristics without compromising service to more "average" or lower-end computers. Kalra's *raison d'etre* thus requires the server to make the determination of when the available bandwidth compared to information volume is adequate and further requires the server to make adjustments responsive to such determination.

As such, modification of the teachings of Kalra to attempt to provide the subject matter of any of Applicant's independent claims defeats the intended purpose of Kalra. It is improper to modify the teachings of a reference in a manner that frustrates the main intent of the reference in an effort to demonstrate unpatentability, as is explained below in more detail with reference to MPEP 2143.01, in a subsection entitled "THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED

PURPOSE". This subsection states that: "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) ...."

A further aspect of this legal principle is in a subsequent subsection of this MPEP section entitled "THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE" This MPEP subsection states that: "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) ...."

In the present rejection, the teachings of Kalra are being modified in a manner that changes the principle of operation of the reference and that also defeats the intended purposes of the reference. For at least these reasons, the rejection of Applicant's claims 1-11, 13-40, 42-47 and 49-57 is improper and should be withdrawn, and claims 1-11, 13-40, 42-47 and 49-57 should be allowed.

To recapitulate, the unpatentability rejections and/or the cited references (i) fail to provide the elements recited in the claims, (ii) the references are not properly combinable because they teach away from each other and the claimed subject matter, (iii) the rejection employs an improper "obvious to try" standard, (iv) employs impermissible hindsight, (v) does not meet the criteria for a finding of unpatentability, (vi) does not appropriately identify motivation to modify/combine, (vii) defeats the intended purposes of the references and (viii) improperly changes the principle of operation of the references.

Dependent claims 2-12, 14-19, 21-23, 25-28, 36-41, 43-48 and 53-57 distinguish for their own recited features and by virtue of dependence from allowable claims. Accordingly, the unpatentability rejection of claims 1-11, 13-40, 42-47 and 49-57 is defective and should be withdrawn, and claims 1-11, 13-40, 42-47 and 49-57 should be allowed.

Conclusion

Claims 1-11, 13-40, 42-47 and 49-57 are in condition for allowance. Applicant respectfully requests reconsideration and issuance of the subject application. Should any matter in this case remain unresolved, the undersigned attorney respectfully requests a telephone conference with the Examiner to resolve any such outstanding matter.

Respectfully Submitted,

Date: July 21, 2004

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